



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FFT, MNSDS-DR
 MNRL-S, MNDL-S, MNDCL-S, FFL

Introduction

This hearing was convened by way of conference call concerning applications made by the tenant as against a landlord and by a landlord as against the tenant. The landlord's name is not the same in the 2 applications.

The tenant applied by way of the Direct Request process for:

- a monetary order for return of all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the landlord for the cost of the application

The application was referred to this participatory hearing, joined to be heard with the landlord's application.

The landlord has applied for:

- a monetary order for unpaid rent or utilities;
- a monetary order for damage to the rental unit or property;
- a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement;
- an order permitting the landlord to keep all or part of the pet damage deposit or security deposit; and
- to recover the filing fee from the tenant.

The tenant and both named landlords attended the hearing and each gave affirmed testimony. One of the landlords (NFZ) indicated that the other named landlord (HL) is a

property manager. The parties were given the opportunity to question each other and to give submissions.

During the course of the hearing, the tenant advised that he has not served the Hearing Package to the landlord, believing that the Residential Tenancy Branch would do so, however the tenant served all evidentiary material to the landlord, NFZ on December 7, 2020 by placing it in her mailbox.

The notice that the tenant received from the Residential Tenancy Branch states, in part: "The applicant is required to give the Residential Tenancy Branch proof that this notice and copies of all supporting documents were served to the respondent," and sets out what supporting documents are required. Since the tenant has not done so, I cannot consider the tenant's application.

The tenant advised that he has received evidence from the landlord, but not any of the evidence submitted by the landlord after November 2, 2020. Any evidence that a party wishes me to consider must be provided to the other party as well. Since the landlord has not served that evidence, I decline to consider it.

All other evidence of the parties has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?
- Has the landlord established a monetary claim as against the tenant for damage to the rental unit or property?
- Has the landlord established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for ending the tenancy earlier than the fixed-term and loss of rental revenue?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord (NFZ) testified that this fixed term tenancy began on February 15, 2019 and was to expire on February 15, 2021, however the tenant vacated the rental unit on August 31, 2020. Rent in the amount of \$4,200.00 was payable on the 1st day of each month and there are no rental arrears to the end of August, 2020. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of

\$2,050.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The landlord further testified that the tenant gave notice to end the tenancy in writing on July 21, 2020 effective September 1, 2020. The landlord agreed that the tenancy could end earlier than the fixed-term because the tenant said that he didn't have any money. The tenancy agreement specifies 2 months notice to end the tenancy, and the landlord claims \$2,800.00 for ending the tenancy early. The clause states that the tenancy is for a fixed term ending on February 15, 2020¹; and, "the tenant could stay three months more or three months less; must be with two months notice."

However, recently the landlord discovered that it wasn't true; the tenant recently purchased a new house, which was purchased about 2 days before giving the landlord a notice to end the tenancy. The landlord told the tenant that since it was a fixed term tenancy, the landlord would try to re-rent. The rental unit has not yet re-rented, and the landlord has not received the tenant's forwarding address in writing.

The tenancy agreement was amended by the parties to reduce rent from \$4,100.00 per month to \$4,200.00 per month. The additional \$100.00 was for pool maintenance; the tenant didn't want to look after the pool and said he would drain it instead of maintaining it, but that isn't good for the pool. The actual cost was \$200.00 per month paid by the landlord. The tenant said he would clean it at the end of the tenancy, at his cost, but didn't clean it for more than a month, so when he moved out, the water turned green and the pool is completely damaged. An invoice for the \$905.00 cost to repair it has been provided for this hearing, as well as an email from the tenant dated July 21, 2020 thanking the landlord for understanding and cooperation. It also states that the tenant will ask a friend for pool cleaning "this month and next month," specifying that the tenant will pay the cost.

The landlord has provided a Monetary Order Worksheet setting out the following claims, which totals \$14,203.00:

- \$903.00 for pool cleaning;
- \$10,500.00 for loss of rental revenue;
- \$2,800.00 for termination early;

The landlord also claims a utility bill, a copy of which has been provided for this hearing in the amount of \$661.15 which covers the period of July 1 to September 30, 2020. Generally, the tenant would pay the bill by e-transfer. The landlord has provided a copy of the bill to the tenant.

The second landlord (HL) testified that the tenant was present for the move-in and move-out condition inspections and copies of the reports were provided to the tenant.

When the landlord heard the tenant was moving out in July, the landlord advertised the rental unit for rent at the end of July, 2020 on Craigslist for \$4,200.00 per month, and on other media. Due to the Pandemic, the rental unit has not re-rented. Copies of advertisements have not been provided for this hearing.

The landlord further testified that the landlords considered the tenant's financial difficulties, and cleaning the pool was a condition. Then the landlords learned that the tenant cheated the landlords. Emails exchanged between the parties have been provided for this hearing.

The tenant testified that in July he sent a request to move out early stating that due to existing conditions, the tenant would stay until the end of August, and suggested to pay full rent, moving out on September 1, 2020. Referring to the emails provided for this hearing, the condition to break the lease was to stay for 2 weeks extra payment; there was no condition for pool cleaning. After the tenant moved out, he received an email from the landlord that a condition was to clean the pool, giving the tenant 7 days to do it, and if he didn't, the landlord would apply to the Court. The responsibility is with the landlords, but when the landlord agreed to end the tenancy early, the tenant would have a friend who maintains pools to take a look. That was on July 23, and the friend did attend and was to return in August, but couldn't go again. That does not turn the responsibility on the tenant because he paid \$100.00 per month for pool maintenance. On September 4, 2020 the tenant's friend put chemicals in the pool and charged the tenant for it. The landlord's claims only came up when the tenant requested return of the security deposit.

The tenant provided the landlords with a forwarding address in writing on August 29, 2020 on the move-out condition inspection report.

The tenant also testified that he paid a utility bill on August 21, 2020 in the amount of \$827.27 by e-transfer but has not received any utility bills from the landlord since.

SUBMISSIONS OF THE LANDLORDS:

The landlords were put in a position that there was no option other than to accept an early move-out because the tenant said he didn't have the money to pay the rent, but there was no agreement that the landlords wouldn't ask for compensation or waive their right to compensation.

Although the agreement specifies \$4,200.00 per month which was to include pool maintenance, the tenant agreed to do the maintenance for July and August, but he didn't fulfill his commitment. The emails provided by the tenant are not all of the emails exchanged between the parties. The tenant broke the contract without compensation to the landlords, left the landlords with a green water pool, and didn't tell the truth. He just didn't want to pay the rent; the landlords were unfairly cheated.

SUBMISSIONS OF THE TENANT:

The tenant suggested that due to the Pandemic he wanted to move out, and didn't hear anything about conditions at that time, except to clean the house. If the tenant would have heard about other conditions, he would have gone over that with the landlords. The July 21, 2020 email from the landlord says that the landlord had already signed a new contract with a person for pool maintenance.

Analysis

Firstly, the *Residential Tenancy Act* specifies how a tenancy ends, which includes what notice is required. That also means that any term in a tenancy agreement requiring more than a months' notice is not enforceable, and the landlord's claim of \$2,800.00 must be dismissed.

A tenant may end a tenancy, whether it's a fixed-term tenancy or a month-to-month tenancy, if the landlord and tenant agree in writing. In this case, I agree that the tenant was not honest about his reason for wanting to end the tenancy earlier than the expiry of the fixed term, and the *Act* does not specify that the written agreement must be in an approved form. The landlords agreed to end the tenancy believing that the tenant would not have the funds to pay the rent.

Where a landlord agrees to end a tenancy, the landlord may not claim compensation for ending the tenancy early. Further, a landlord must be able to establish that the landlord did what was reasonable to mitigate any loss of rental revenue. In this case the landlord testified that the rental unit was advertised in July, 2020 on Craigslist and other websites, and was able to provide photographs of the tenant's new home, but no evidence of the advertisements to re-rent. Therefore, I find that the landlords have not established mitigation and are not entitled to recovery of lost rent.

I have reviewed all of the evidentiary material of the parties, and I am satisfied that the tenant agreed to have the pool cleaned at the end of the tenancy. Regardless of whether or not his friend was available in August, the tenant had the responsibility, and I find that the landlord has established a claim of \$905.00 to clean the pool.

The tenant did not dispute the utility bill, and I am satisfied that the landlords are entitled to recovery of two thirds (July and August) \$440.77 ($\$661.15 / 3 \times 2 = \440.77).

The tenant testified that he gave the landlord his forwarding address in writing on the move-out condition inspection report. I have reviewed all of the reports provided by the parties, and the only address that appears is the address of the landlord.

Since the landlord has been partially successful, the landlord is also entitled to recovery of the \$100.00 filing fee.

I order the landlord to keep \$1,445.77 of the \$2,050.00 security deposit held in trust, and to return the balance of \$604.23 to the tenant, and I grant a monetary order in favour of the tenant in that amount.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

The landlord's application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

I hereby order the landlord to keep \$1,445.00 of the \$2,050.00 security deposit and I hereby grant a monetary order in favour of the tenant as against the landlord for the difference, pursuant to Section 67 of the *Residential Tenancy Act*, in the amount of \$604.23.

This order is final and binding and may be enforced.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 24, 2020

Residential Tenancy Branch